

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

METZ FARMS, a Partnership, ) CIV. 12-4005  
 )  
 Plaintiff, )  
 )  
 vs. ) **COMPLAINT**  
 )  
 FISHER SAND & GRAVEL CO., )  
 a North Dakota Corporation, )  
 )  
 Defendant. )

**JURISDICTION**

1. Plaintiff Metz Farms ("Metz Farms") is a Partnership with its principal place of business being located in Hanson County, South Dakota.

2. Defendant Fisher Sand & Gravel Co. ("Fisher") is a North Dakota Corporation with its principal place of business located in Dickinson, North Dakota.

3. Jurisdiction in this Court is proper under 28 USC § 1332 because of complete diversity and because the amount of damages exceed the sum of \$75,000.00. Venue is proper in this Court under the provision of 28 USC § 1391(a)(2) given the acts and omissions giving rise to the claim alleged herein occurred within the State of South Dakota.

**FACTS**

4. On January 28, 1986, Plaintiff and Defendant entered into a Sand and Gravel Agreement (the "Agreement") under the terms of which Metz Farms granted to Fisher the right to mine and excavate rock, sand, and gravel for twenty (20) years from land located in Sections 4 and 5, Township 102, Range 59, Hanson County, South Dakota ("the property"). The Agreement is attached hereto as Exhibit 1 and incorporated by this reference herein.

5. Fisher began mining and removing rock, sand, and gravel from the property during November 1987 and has since completed its mining and processing operations.

6. The Agreement provides that upon completion of the mining and processing operation, Fisher shall restore such areas which are disturbed during the mining process to a generally smooth condition and neat appearance at no expense to Metz Farms.

7. On or about May 28, 2006, Metz Farms and Fisher entered into a Release And Agreement wherein Fisher agreed to reclaim the property that is the subject of the Agreement in full compliance with the regulations and direction provided by the South Dakota Department of Environment and Natural Resources.

8. Fisher has failed to restore such areas that have been disturbed during the mining process to a generally smooth condition and neat appearance and has failed to reclaim the property in full compliance with the regulations and direction of the SDDENR and by such omissions, has breached its contracts with Metz Farms.

9. As a direct result of Fisher's breach of its contracts with Metz Farms, Metz Farms has been damaged and continues to be damaged.

WHEREFORE, Metz Farms demands judgment against Fisher in the amount of \$4,735,000 for the damages it has been caused to sustain plus its costs and interest, all according to applicable law.

Dated this 5th day of January, 2012.

BEARDSLEY, JENSEN & VON WALD,  
PROF. L.L.C.

By   
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**DEMAND FOR JURY TRIAL**

In accordance with Federal Rule of Civil Procedure  
38(b), Plaintiff demands a jury trial of all its claims.



Larry M. Von Wald